



21ST TSC KAISERSLAUTERN LEGAL SERVICES CENTER



KAISERSLAUTERN LEGAL INFORMER

GERMAN ATTORNEY — MAKING A DIFFERENCE!



PROFESSIONAL PROFILES

This is the first in a series of profiles of members of the staff of the Kaiserslautern Legal Services Center. We're proud of the team of attorneys and paralegals who meet the legal services needs of the largest community of Americans overseas. By getting to know our staff better, our readers will know who they can turn to for help with a legal problem. As is so often the case when it comes to resolving legal matters, it's who you know that counts...

by Steve Smith

Joerg C. Modellmog joined the staff of the Kaiserslautern Legal Services Center in August of 2005. What a difference a year makes! Prior to his arrival, clients who needed the assistance of a German attorney often had to wait three weeks or more for an appointment. Joerg's predecessor, Werner Sukup, had to divide his time between three different legal assistance offices, and could spend only two days a week in K-town. By hiring a second German attorney, the 21st TSC OSJA reduced appointment backlogs in all three offices. Joerg works full-time in K-town, and Werner now divides his time between Stuttgart and Mannheim.

Joerg spent nine years as the German Attorney-Advisor at the 1st Infantry Division's Schweinfurt Law Center before moving to K-

town. In Schweinfurt, he acquired a wealth of experience in all aspects of the Army's legal assistance practice. He translated that experience into a series of highly informative client handouts, which are now available in the Kaiserslautern Legal Services Center's Legal Assistance Office waiting room and on the 21st TSC OSJA web site. He also developed a well-earned reputation as an expert in German landlord-tenant law, tax and estate law, and consumer law, and regularly teaches classes on those subjects at the annual USAREUR Legal Assistance Conference.

Joerg speaks fluent French and some Italian, in addition to German and English. He did his German legal studies in Bremen, and holds a Master of Laws degree from the George Washington University School of Law. We're delighted to have this gifted attorney, prolific author, and talented teacher on our staff. He's making a huge difference in our practice.



**United States Army
Judge Advocate
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Estate Planning in the Military

by CPT Jonathan Hoag

“In this world nothing is certain but Death and Taxes”— Benjamin Franklin.

While Ben Franklin’s famous quip may seem humorous, a whole area of law focuses largely on the combination of those two topics: Death and Taxes. That area of the Law is called “Estate Planning.” Your “estate” is simply the whole of your possessions and generally refers to all property, assets, and debts left upon your death. Estate planning is the process of maximizing the amount of money that you acquire in life, and making sure that largest portion of this is left to those who you want to receive it (your beneficiaries) while reducing the amount of estate tax and probate court costs.

Even if you have never thought about it before, you already have an estate plan. Every state has a statutory estate plan. This means that if you were to die without a will the law of that particular state would determine how your property should be divided. Generally this means that if you are married, your estate would be divided between your wife and children, or if you are single, your immediate family. This process will continue until the state can no longer find any living relatives and, contrary to popular belief, this almost never happens.

If you want to take a more active roll in your estate plan, there are several common op-

tions: you can hold property in joint tenancy; you can provide for your beneficiaries with contractual devices such as life insurance; you can make a Will; or finally, you can set up a Trust. Which option or combination of options works best for you depends on several factors. Those factors include the size of a service member’s estate, their marital status, and whether or not they have children. The reason it is important to understand these factors is illustrated in the example below:

Assume that a Husband and Wife have a large bank account that they own jointly. If something were to happen to either party then the surviving spouse would acquire sole ownership of the account, and avoid the hassle and additional cost of probate court. Let’s assume, however, that the couple has one child and also that the Husband has a child from a former marriage. Let’s further assume that the Wife has not adopted the child. A Joint Tenancy would be ill-advised if the Husband wants to provide for the child of his first marriage. If the Husband were to die, the Wife will become the

sole owner of the assets in the account. The Husband could only hope that his Wife would use some of the money in the joint bank account for the benefit of his first child. If, however, the Wife died shortly thereafter then all the money in the account would be distributed by her will or statutory estate plan and would exclude the Husband’s child from a former marriage unless she has specifically provided for that child.

While this example may appear to be a convoluted way to stress an important point, it’s a scenario I have all too often encountered in real life. In these cases I have advised Soldiers on ways to more adequately protect their children.

The Soldier in the above scenario can remedy the situation by several methods. One of these methods is to draft a will which specifically bequeaths (gives) assets to the child from a former marriage. Another method and, perhaps, the better method if that child is still a minor, is to create a trust for the benefit of the child. A trust is where property, in this case the money in the joint bank

account, is given to a Trustee. The Trustee has a duty to hold that money and invest it prudently for the benefit of the named beneficiaries, in this case the Husband’s child from a former marriage. In any event, it would be wise to discuss these matters with an attorney and, since our clients are entitled to free legal advice, why not be safe?

Unfortunately, the area of estate law and planning is a vast topic which prevents me from an in-depth discussion here. The important takeaway is that while not everyone may need a complicated estate plan, a quick consultation can usually expose any pitfalls such as the one in the scenario above. Remember that generally childless, single Soldiers who have modest assets do not normally need an estate plan. However, married Soldiers with children or those with substantial assets should consider consulting with an attorney regarding their estate plan.

For further information on wills and estate planning, contact the Kaiserlautern Legal Assistance Office at DSN 483-8848 or 0631-411-8848.

How to Get Back German Rental Security Deposits

by Joerg Modellmog

Under German law, landlords may ask for a deposit not to exceed three-months' net rent. However, the tenant has the right to make the rental security deposit payments over a three-month period in three equal monthly shares. If the landlord and the tenant agree, instead of paying the rental security deposit into an account, the tenant may present a bank guarantee to the landlord. A good compromise is usually to put the security deposit in a joint savings account which can only be touched with both the landlord's and the tenant's consent.

The landlord has to keep the rental security deposit apart from his/her other assets in an interest-accruing account. The interest drawn by the deposit accrues to the tenant annually and increases the rental security deposit. I recommend putting a clause in the rental agreement requiring the landlord to provide proof he/she complied with these requirements, or else the tenant should get the right to withhold his rental payments until such proof is provided.

Unless the landlord agrees, the tenant may not set off the rental security deposit against any rent payments due. An exception

may apply in case of the landlord's imminent bankruptcy. By contrast, the landlord may use the rental security deposit if the tenant defaults on paying rent. Thereafter, the tenant has to settle the rental security account, again.

§ 321 BGB (German Civil Code) gives the tenant the right of retention with respect to his/her rent payments against the (endangered or lost) rental security deposit - BEFORE any insolvency procedure is started - if the landlord fails to provide proof of the legal security of the tenant's security deposit. Yet, the tenant will have to keep the set-off amount available as security deposit. Therefore, if you become aware of any financial problems of your landlord, you may exercise that right because once the insolvency proceedings start, you will only receive the rental security deposit back if the landlord kept it in accordance with the law. If the landlord misappropriated it, you merely become another ordinary creditor.

A tenant is entitled to a return of the deposit only after the premises have been turned back to the landlord. However, the landlord is entitled by law to a rea-

sonable period of time - usually 6 to 12 months(!) - to examine possible claims against the tenant, to include the final utility bill.

The moving out protocol should help to speed up this process and lead to at least a partial repayment of the rental security deposit; interest continues to accrue on the portion still withheld. In a worst-case scenario, the actual costs are settled in an annual bill, which must be presented within a 12-month period following the end of the (annual) billing year. Putting a clause in the rental agreement specifying the terms of return/settlement of the security deposit is recommended.

If the premises have been sold, the new owner/landlord has to pay back the rental security deposit to the tenant, even if the former owner/landlord did not transfer it to him/her. In any case, the former owner remains liable as a secondary debtor, if the tenant cannot obtain the rental security deposit from the new owner/landlord.

If you have further questions, you can pick up a detailed handout at the Legal Assistance Office or make an appointment by calling DSN



Colonel Scott Arnold, 21st TSC SJA, presents Claims Examiner Karin Jordan with an Army Civilian Commendation Certificate for a job well done. Other Kaiserslautern Legal Services Center personnel receiving certificates included: Jim Wiley, Donald Davis, Joerg Modellmog, Josephine Arguelles, Martina Berndt, Conchita Dunn, Karl-Heinz Oberlaender, & Gabi Wilanowski.



6% Interest Cap — An Important Servicemembers Civil Relief Act Benefit

by CPT Jeff Colemere

Interest rates on pre-service financial obligations of a service member may be limited to six percent under the Servicemembers Civil Relief Act (or the SCRA, as it is commonly called). To qualify for a reduction of an interest rate in excess of six percent, the service member must have

incurred the debt prior to entering active duty and must be able to show that his or her obligations materially affect his or her ability to pay the debt. In general, if the service member's income or overall financial welfare has been negatively impacted as a result of being ordered to active duty, there is a material

affect on ability to pay the debt. Application for the interest rate reduction is made by providing written notice to the creditor by certified mail within 180 days of entering active duty together with a copy of the service member's orders. Upon receipt of that notice, the creditor must treat the interest rate as six percent

as of the date that the service member was ordered to active duty and forgive any interest above the six percent cap. Creditors cannot defer the interest or charge additional fees—the interest must be completely forgiven. It should be noted, however, that the six percent interest cap is not applicable to federally subsidized

What is an "Article 139" Claim? by CPT Desirée Helmick

If your property has been damaged by a service member, then Article 139 may help you. Article 139 of the Uniform Code of Military Justice (UCMJ) provides administrative redress for loss or damage to **property** which has been "willfully damaged" or "wrongfully taken" by a member of the Armed Forces of the United States. Damage caused by a service member's negligence is not covered by Article 139 and thus cannot be the basis for an Article 139 claim. The same is true for any damages resulting from a breach of contract.

Any individual, business entity, state or local government, or charity may submit an Article 139 claim. The claim must be submitted to the local claims office **within 90 days** of the date of incident. It is important to note that only direct damages are recoverable under Article 139. Direct damages are defined as damages flowing directly from the wrongful act. Damages that flow indirectly from the wrongful act — *i.e.*, costs of telephone calls, mileage, postage, copies, or attorneys' fees incurred to pursue a claim under Article 139 — are consequential damages and are not compensable. Also, personal injuries, wrongful death, and theft of services are not cognizable under Article 139. The Kaiserslautern Legal Assistance Office can assist claimants in preparing the necessary documentation. Any supporting documentation should also

be submitted with the claim, including police reports, witness statements, and estimates for repair.

After the claim is filed, it is forwarded to the service member's Special Court Martial Convening Authority (SPCMCA) within two working days. If the SPCMCA determines the claim to be cognizable, within four working days the SPCMCA appoints an Investigating Officer (IO) to conduct an informal investigation.

The IO will notify the service member of the claim against him/her and give the service member the opportunity to make voluntary restitution. If the service member makes full restitution, then the investigation may be terminated. If the service member does not agree to make restitution, then the IO has ten working days to conduct an investigation, make findings as to whether the claim is legitimate, and recommend an amount to be assessed against the service member's pay.

A preponderance of the evidence is the standard used for a finding of liability under Article 139. This means that in order to recommend liability the IO must conclude that it is more likely than not that the claim is valid. The IO will submit findings of fact and recommendations to the SPCMCA through the claims office. The Claims Judge Advocate (CJA) then

has five working days to review the investigation to determine whether the findings and recommendations are legally sufficient and supported by the evidence. If they are not, then the CJA will return the claim to the IO for additional investigation. If the findings are legally sufficient, then the CJA will forward the claim to the SPCMCA.

The SPCMCA may disapprove the claim regardless of the amount or approve it in an amount equal to or less than the amount recommended by the IO for claims of \$5,000 or less. The SPCMCA will then notify the service member and the claimant in writing of the decision and of their right to request reconsideration. Final action on the claim will be withheld for ten days in order to give both parties time to appeal the decision. After ten days the SPCMCA will direct Finance to withhold pay from the service member in the amount of the approved claim and to pay that amount to the claimant.

For more information, contact the Kaiserslautern Claims Office at DSN 483-8414 or 0631-411-8414.



Joerg Modellmog does more than practice law. He recently attended weapons training in Darmstadt with the 6966th German Civil Support Unit while teaching them the German law pertaining to self-defense.

Who is covered under the Servicemembers Civil Relief Act?

By CPT Jeff Colemere

The Servicemembers Civil Relief Act (SCRA) applies to members of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard who are on active duty. Reservists and members of the National Guard who have been called to active service for a period of 30 days or more may also qualify for benefits under



Are you interested in becoming a Paralegal or Court Reporter in the US Army JAG Corps?

Contact MSG DeSouza at DSN 484-8164 or 0631-413-8164 for details.

More SCRA Protections-Early Termination of Automobile Leases

by Jeff Colemere

Under the provisions of the SCRA a service member may be able to find relief if they entered into an automobile lease contract, are deploying, and wish to sever the contract. Automobile leases that were entered into by a service member prior to entering military service or prior to receiving orders for deployment for no less than 180 days or for a change of permanent duty station either out of state

or out of the country may be terminated. The process of termination requires the service member (or a co-signor on the lease agreement) to submit written notice of the termination and a copy of the service member's orders to the leasing company or its designated agent by certified mail. Within 15 days of delivery of the termination notice, the leased vehicle must also be returned to the leasing

company or its designated agent. Termination of the automobile lease is deemed final as of the date that the vehicle is returned. Although the service member is not liable for any early termination fees, the service member is liable for any tax, title and registration fees, and for any reasonable charges for excess wear, use, and mileage that are due and unpaid at the time



Some articles in this newsletter are based in part on materials distributed by The Judge Advocate General's School through the Kaiserslautern Legal Services Center, Office of the Staff Judge Advocate, Legal Assistance Office, located in Building 3210, Kleber Kaserne.

Contact us at DSN 483-8848 or 0631-411-8848 for answers to your legal assistance questions.

Power of Attorney Practical Tips

by Jim Wiley

A Power of Attorney (POA) is a powerful document that legally authorizes someone else to act as your agent. You might, for example, wish to allow your spouse, supervisor, or friend to act as your agent to sell your car or ship your household goods. If your child is spending the summer with her grandmother, you probably want the grandmother to be able to obtain medical care for your child. This can also be accomplished with a POA.

The "grantor" of a POA is the person who gives the POA. The "agent" is the person authorized under the POA to act for the grantor. The agent must be at least 18 years of age, trustworthy, and mature. POAs generally must be notarized and are essential when preparing for deployments, or arranging your personal affairs if you know you cannot be present to authorize

a given action.

There are two main types of POAs: a special and a general. A special (or limited) POA only allows your agent to do specified acts. For example: "I authorize my wife, Teresa Doe, to register my 2005 Chrysler Town and Country van with the State of Oregon when its current registration expires." On the other hand, a general POA allows your agent to do most things that you could legally do yourself. You should be careful before granting anyone a general POA, since you are allowing the agent to do many things in your name and you are legally responsible for his or her acts. You should always exercise great care in selecting your agent and never give a general POA if a special POA will suffice.

There is no legal requirement that anyone recognize a

POA, but most businesses will recognize the document. Many businesses will only accept a power of attorney if it is timely and has language they find acceptable. As such, it is always wise to contact individual agencies such as your bank, creditors, and even military organizations such as DFAS to find out what type of POA they will or will not accept. Some institutions require their own forms to be used. In addition, in many states there are some actions that cannot be accomplished with a POA because these actions are so personal they cannot be delegated to another (*e.g.*, a marriage ceremony or will execution).

A POA helps absolve a person or business, relying on a valid POA, from liability. It also serves to legally obligate you to be responsible for the acts of your agent. If the agent abuses his power, you are generally liable to third parties for

actions were authorized under the plain language of the POA, and the third party reasonably relied on the POA. You may be able to sue your agent for reimbursement of any losses you incur. However, this is a time-consuming and expensive process.

To prevent improper use of your POA, you should never give a POA unless you need to give one. If you feel you might need a POA, have one prepared, but do not sign it or give it to your agent until you need it. Always put an expiration date on your POA; never make one that lasts indefinitely.

A POA always expires on the death of the grantor or of the agent named in it. If you want to terminate a POA before its stated expiration date, the safest way to do this is to retrieve all the copies and originals given to your agent.

Continued on Page 6

A Claims Checklist...

by CPT Desirée Helmick and Josephine Arguelles

A review of the bullets below will make your visit to your local Claims Office more productive.

- DD Form 1840/1840R (a.k.a, “the pink form”) must be turned in within 70 days of the date of delivery of each shipment.
- Turn in each pink form separately. Do not wait to turn in the hold baggage pink form until the household goods shipment has arrived. If you wait for all shipments to arrive you may miss the 70-day deadline!
- The 70-day deadline is to provide notice to the government of your intention to file a claim, once you have met that deadline you have 2 years from the date of delivery to finalize your claim.
- Do not throw away damaged items. The carrier or claims office may need to perform an inspection.
- Please provide pictures of the damage so the claims office can determine if an estimate of repair is needed.
- Pink forms can be turned in at the Claims Office on a walk-in basis.
- To initiate a claim please provide the claims office with the following:
 - DD 1840/1840R
 - Original inventory
 - 1 Copy of PCS orders and all amendments authorizing shipment

The Kaiserslautern Legal Services Center’s Claims Office is located in Room 110 on the ground floor of Bldg. 3210, Kleber Kaserne. [See the map on page 8 for directions.]

Opening hours are: M, T, W, F: 0900-1200 & 1300-1600; Th: 1300-1500

Telephone: DSN 483-8414/7463 or 0631-411-8414/7463

[Note: Air Force Personnel should contact the Ramstein Claims Office in Bldg. 2137 on Ramstein Air Base. Telephone: DSN 480-2245/7011 or 06371-47-7011]

NEWS FLASH...

The 21st TSC Office of the Staff Judge Advocate welcomes the newest members of our legal services team, 1LT(P) Ryan Krohn, SSG Derek Tillman, and PFC Alicia McGuire. We also welcome back our returning heros from down-range: SSG Gladys Crum, SGT Jeri Cobb, and CPL Krista Bullard.

The Judge Advocate General's School & Legal Center in Charlottesville, Virginia, is responsible for training all JAGC personnel.



Power of Attorney Practical Tips (cont.)

If that cannot be done, the next best method is to execute a Revocation of Power of Attorney and give a copy to any person who might deal with the agent named in the original POA.

A POA is an excellent tool if it is used properly and if it is in the hands of the proper person. However, it can be dangerous if not used with extreme care. As with all safety issues, one should perform a risk analysis. Your legal assistance office can help you to evaluate the risk and the benefits. The Kaiserslautern Legal Services Center’s Legal Assistance Office can prepare a special or general POA. We also have notaries on our staff who can notarize the document. The grantor must sign in the presence of the notary. The agent need not be present.

POAs and notary services do not require an appointment and are available on a walk-in basis during normal duty hours. For directions on how to find the Kaiserslautern Legal Services Center’s Legal Assistance Office, see the map on page 8 of this newsletter.

Child custody and property division while stationed overseas: knowing your rights during a divorce and separation...

by CPT Jonathan Hoag

Deciding to pursue a divorce or separation is never easy. This process can be far more difficult when a Soldier or civilian is stationed overseas. The fact that we are military members or Department of Defense civilians subject to a command structure with its own rules and regulations is one factor which often makes this issue more complicated. It is important to realize that while the Department of Defense can regulate some aspects of our divorce and separation, the ultimate authority on these matters should be a civilian court. The problem of course is that gaining access to a civilian court while stationed overseas and living in a foreign country can be difficult.

Child custody is one particular area in the separation process that can be very difficult to resolve overseas. Army personnel and their commanders are guided by AR 608-99, entitled "Family Support, Child Custody, and Paternity." However, it is important to realize from the start that the German courts will have the authority to resolve disputes over child custody once the child has resided in Germany for six months. If there is a custody dispute between a husband and wife, the military command or even family advocacy may intervene and attempt to resolve disputes or in extreme cases issue orders limiting a party's parental rights. The authority of the command or any Department of

Defense agency to influence or dictate custody determination is limited. While a soldier must always follow a lawful order the soldier can petition a German court to hear the matter and make a custody determination. Both the soldier and the command should then adhere to the requirements of the valid court order. In all cases, a commander should be wary about issuing an order which either directly or indirectly affects custody.

Although hopefully not as emotionally straining as child custody, property division can also lead to a great deal of stress in the separation process. Situations often arise where the parties have separated and the dependent spouse wishes to return to the United States with his or her property. If the other spouse does not support this and the two parties cannot agree on property division then there is no clear way to resolve this issue absent a court order. Government movers should not take property from a home if they are aware there is a legal dispute over the property. Generally, a Power of Attorney is required from the absent spouse as proof that they have agreed to the move. The absence of a Power of Attorney is often an indication that there is a dispute. In these cases, a valid separation agreement clearly dividing property or a court order would be a legally sufficient substitute. As always, command involvement should be minimal and soldiers should not be forced into an agreement or to sign off on a move.

It may be wise, therefore, to consider other options before you spend thousands of Euros deciding who is going to get that priceless wagon wheel coffee table. You may want to consider coming to an agreement with your spouse, and draft a separation agreement. A separation agreement is a contract which can address child support and property division as well as many other issues. However, it is never advisable to enter into a separation agreement without full awareness of the consequences, as there will be lasting legal effects on the parties. The Legal Assistance Office can advise you and ultimately prepare a separation agreement for you if, in the end, you and your spouse decide to compromise.

In any event, the command should never advise a service member that they have to enter into a separation agreement. All too often I hear that in order to start the Early Return of Dependents or qualify for some benefit there must be a signed separation agreement. This is quite simply the wrong answer. A separation agreement can have far-reaching legal ramifications and service members should never be required to enter into one.

For further information, contact the Kaiserslautern Legal Assistance Office at DSN 483-8848 or 0631-411-8848, or visit the American Bar Association's Military Committee on Family Law website at:

<http://www.abanet.org/family/military/>

SCRA Protection For Stored Items

by Jeff Colemere

A service member who is called to active duty and must place household goods or other items of personal property in storage is entitled to certain foreclosure protections on storage liens. Under the SCRA, a lien holder may not initiate foreclosure proceedings for default of payment on a service member's stored personal property, during the period of active duty and for 90 days thereafter, without first obtaining a court order. This protection applies regardless of whether the goods were placed in storage prior to active duty or during active duty. It is important to remember that these protections only apply to organizations in the United States. If you have questions regarding German storage companies or need more details on the SCRA, call the Kaiserslautern Legal Assistance Office at DSN 483-8848 or 0631-411-8848.

**21ST TSC KAISERSLAUTERN
LEGAL SERVICES CENTER**

**Building 3210
Kleber Kaserne**

Legal Assistance 483-8848

Claims 483-8414

Tax Assistance 483-7688

International Affairs 483-8854

Trial Defense Service 483-8165

Administrative Law 484-7450

Criminal Law 484-8311

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AERJA/DEFAULT.HTM](http://www.21tsc.army.mil/aerja/default.htm)**

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HISTORY/HISTORY2.HTM](http://www.21tsc.army.mil/aerja/history/history2.htm)**

Making the Most of Your Legal Assistance Appointment

by Jim Wiley

Please:

- call for an appointment at DSN 483-8848 or 0631-411-8848.
- show up 10 minutes early.
- let our staff know if you have been here before.
- bring:
 - all legal documents you have sent or received
 - all correspondence you have sent or received
 - all e-mail traffic
 - all points of contact.
- call to cancel if you cannot make your appointment.
- pick up will worksheets prior to visiting us either in Building 3210, Room 104, or at our website <http://www.21tsc.army.mil/aerja/LegalAssist/Areas-Estate%20Planning/Areas-Estate%20Planning.htm>.
- ask lots of questions.
- file a comment card and let us know how we are doing.
- be diligent in following up.

Directions to Kleber Kaserne. From Vogelweh, Ramstein, or Landstuhl take the A6 direction Mannheim. On your right you will see a large store called Möbel Martin. Make sure you are in the right lane as you take the Kaiserslautern Ost exit/Ausfahrt. Turn right as you leave the exit ramp and drive downhill until you reach the stop light. Turn right and proceed straight until the next stoplight. Turn left and you will be in front of Kleber. Follow the perimeter until you find an open gate. Once you are on the post, park in the Shoppette parking lot. Bldg. 3210 is directly across from the Alteration Shop/Pick-Up Point.

